

¹ 5 U.S.C. § 8101 *et seq.*

due to factors of his federal employment, including exposure to the ultraviolet rays from the sun. He noted that he first became aware of the condition on September 26, 2007 and realized its relationship to his federal employment on February 18, 2020. In an attached February 28, 2020 statement, appellant detailed his exposure to the sun, both on and off the job. He also cited to prior Board decision pertaining to causal relationship.

In a February 23, 2020 report, Dr. Suzette Sanchez, an osteopath specializing in dermatology, noted that appellant had worked for the employing establishment for over 30 years and had spent most of his eight-hour workday outside delivering mail. She reported that appellant had previously been treated for actinic keratosis and basal cell carcinoma on his upper mid forehead in 2017 and was seen on February 18, 2020 for recurring actinic keratosis on his right forehead. Dr. Sanchez indicated that actinic keratosis and basal cell carcinoma is a skin cancer, which directly correlates with high amounts of past sun exposure. She noted that appellant had a lifetime of sun exposure and opined, with a reasonable degree of medical certainty, that his extensive time spent outside in the sun delivering mail contributed to the development of actinic keratosis and basal cell carcinoma. An April 28, 2017 dermatopathology laboratory report was attached, which identified appellant's biopsied specimen as basal cell carcinoma.

In an April 2, 2020 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of evidence needed to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

In an April 6, 2020 letter, appellant responded to OWCP's April 2, 2020 development letter. He also resubmitted his previous correspondence and evidence.

By decision dated May 11, 2020, OWCP denied the claim, finding that the medical evidence of record was insufficient to establish that the claimed medical conditions were causally related to the accepted work events.

On June 1, 2021 appellant requested reconsideration an appeal request form. In an accompanying May 27, 2021 letter, he argued that OWCP never mentioned nor considered his April 6, 2020 submission, which contained relevant information. Appellant further argued that Dr. Sanchez was not required to delineate the percent of non-federal or federal exposure contribution to his skin cancer, only that his federal employment contributed to the development of his skin cancer. In support of his argument, he again cited to the same Board precedent as cited in his February 28, 2020 statement.

By decision dated June 17, 2021, OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

LEGAL PRECEDENT

Pursuant to section 8128(a) of FECA, OWCP has the discretion to reopen a case for further merit review.² This discretionary authority, however, is subject to certain restrictions. For

² 5 U.S.C. § 8128(a); *L.W.*, Docket No. 18-1475 (issued February 7, 2019); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

instance, a request for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.³ Timeliness is determined by the document receipt date, *i.e.*, the "received date" in OWCP's Integrated Federal Employees' Compensation System (iFECS).⁴ Imposition of this one-year filing limitation does not constitute an abuse of discretion.⁵

When a request for reconsideration is untimely, OWCP undertakes a limited review to determine whether the request demonstrates clear evidence that OWCP's most recent merit decision was in error.⁶ OWCP's procedures provide that it will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.607, if the claimant's request for reconsideration demonstrates "clear evidence of error" on the part of OWCP.⁷ In this regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.⁸

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue, which was decided by OWCP.⁹ The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error. Evidence, which does not raise a substantial question concerning the correctness of OWCP's decision, is insufficient to demonstrate clear evidence of error. It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion. This entails a limited review by OWCP of how the evidence submitted with the reconsideration request bears on the evidence previously of record and whether the new evidence demonstrates clear error on the part of OWCP. To demonstrate clear evidence of error, the evidence submitted must be of sufficient probative value to shift the weight of the evidence in favor of the claimant and raise a substantial question as to the correctness of OWCP's decision.¹⁰

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard. The claimant must present evidence, which on its face demonstrates that OWCP made an error (for example, proof that a schedule award was miscalculated). Evidence such as a detailed, well-rationalized medical report, which if submitted before the denial was issued, would have created a conflict in medical opinion requiring further development, is not clear evidence of

³ 20 C.F.R. § 10.607(a).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020).

⁵ *G.G.*, Docket No. 18-1072 (issued January 7, 2019); *E.R.*, Docket No. 09-0599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁶ See 20 C.F.R. § 10.607(b); *D.M.*, Docket No. 21-0261 (issued September 29, 2021); *M.H.*, Docket No. 18-0623 (issued October 4, 2018); *Charles J. Prudencio*, 41 ECAB 499 (1990).

⁷ *D.M.*, *id.*; *L.C.*, Docket No. 18-1407 (issued February 14, 2019); *M.L.*, Docket No. 09-0956 (issued April 15, 2010). See also 20 C.F.R. § 10.607(b).

⁸ *J.M.*, Docket No. 19-1842 (issued April 23, 2020); *Robert G. Burns*, 57 ECAB 657 (2006).

⁹ See *D.M.*, *supra* note 6; *S.C.*, Docket No. 18-0126 (issued May 14, 2016).

¹⁰ *C.M.*, Docket No. 19-1211 (issued August 5, 2020).

error.¹¹ The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹²

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

On June 1, 2021 appellant filed a request for reconsideration. As this request was received more than one year after the latest merit decision, dated May 11, 2020, the request for reconsideration was untimely filed pursuant to 20 C.F.R. § 10.607(a).¹³ As such, appellant must demonstrate clear evidence of error with respect to OWCP's last merit decision.¹⁴

In support of his untimely reconsideration request, appellant argued that OWCP did not review all the documents he submitted. He also argued that Dr. Sanchez was not required to delineate the percent of non-federal or federal exposure contribution to his skin cancer, but that she need only to opine that his federal employment contributed to the development of his skin cancer. In support of his argument, appellant cited to Board precedent for the proposition that it is not necessary to show a significant contribution of employment factors to a diagnosed condition to establish causal relationship.¹⁵ His argument, however, failed to sufficiently explain how this legal precedent in conjunction with Dr. Sanchez February 23, 2020 report raises a substantial question as to the correctness of OWCP's May 11, 2020 merit decision.¹⁶

The Board, thus, finds that appellant has not raised an argument or submitted any evidence that manifests on its face that OWCP committed an error in denying his occupational claim.¹⁷ As such, his untimely request for reconsideration failed to demonstrate clear evidence of error.¹⁸

¹¹ *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *supra* note 4 at Chapter 2.1602.5(a) (September 2020).

¹² *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

¹³ 20 C.F.R. § 10.607(a).

¹⁴ 20 C.F.R. § 10.607(b); *see D.M.*, Docket No. 21-0261 (issued September 29, 2021); *R.T.*, Docket No. 19-0604 (issued September 13, 2019); *see Debra McDavid*, 57 ECAB 149 (2005).

¹⁵ *C.H.*, Docket No. 20-0194 (issued August 26, 2021); *F.K.*, Docket No. 19-1804 (issued April 27, 2020); *J.B.*, Docket No. 17-2021 (issued August 8, 2018); *G.G.*, Docket No. 17-0504 (issued August 8, 2017); *Beth C. Chaput*, 37 ECAB 158 (1985) (it is not necessary to show a significant contribution of employment factors to a diagnosed condition to establish causal relationship).

¹⁶ *See O.K.*, Docket No. 21-0708 (issued September 29, 2021); *T.C.*, Docket No. 19-1709 (issued June 5, 2020); *B.W.*, Docket No. 19-0626 (issued March 4, 2020).

¹⁷ *O.K.*, *id.*, *S.C.*, Docket No. 19-1424 (issued September 15, 2020).

¹⁸ *Id.*

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

ORDER

IT IS HEREBY ORDERED THAT the June 17, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 18, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board